

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

FRANCIS L SMITH-BEY,)	
)	
Plaintiff,)	
)	
vs.)	1:11-cv-1204-TWP-MJD
)	
EDWIN G. BUSS, STEPHEN T.)	
HALL, and MARK DODD,)	
)	
Defendants.)	

Entry Granting Motion to Dismiss

This is an action brought pursuant to 42 U.S.C. § 1983. Two of the three defendants seek dismissal of the claims against them pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*.

I.

The plaintiff is a state prisoner who alleges that his federally secured rights have been violated through the confiscation of religious items and other infringements of his religious practices. To survive the motion to dismiss and comply with the requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged.” Id. (citing *Bell Atlantic*, 550 U.S. at 556).

“Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676. Thus, only persons who cause or participate in a constitutional violation are responsible pursuant to 42 U.S.C. § 1983. *George v. Smith*, 507 F.3d 605, 609-610 (7th Cir. 2007). AA defendant will be deemed to have sufficient personal responsibility if he directed the conduct causing the constitutional violation, or if it occurred with his knowledge or consent.@ *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001).

The allegations in the amended complaint fail to plausibly meet the personal participation requirement as to defendants Buss and Hall because these defendants are not alleged to have personally caused or participated in the asserted constitutional violations. These defendants neither conducted nor directed the actions which the plaintiff asserts violated his rights.

II.

The motion to dismiss filed by defendants Buss and Hall [Dkt. 18] is **granted**.¹

No partial final judgment shall issue at this time as to the claim(s) resolved in this Entry.

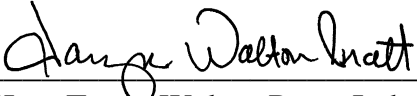
The claims which remain are those seeking injunctive relief from defendant Dodd in his official capacity and seeking damages from defendant Dodd in his

¹ The motion to dismiss was previously **granted** as to any claim for damages against the defendants in their official capacities.

individual capacity. Directions heretofore issued to defendant Hall relating to the plaintiff's effort to secure release of religious items shall apply to defendant Dodd.

IT IS SO ORDERED.

Date: 07/27/2012


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution:

Sheik Francis Smith-Bey
955755
Pendleton Correctional Facility
Inmate Mail/Parcels
4490 West Reformatory Road
Pendleton, IN 46064

All electronically Registered Counsel